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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

LAUREN SUBLETT, Plaintiff and Respondent, v. MELANIE MARIA GARCIA, Defendant and Appellant.	A150254 (City & County San Francisco Super. Ct. No. FDV-16-812615)

Melanie Garcia appeals a domestic violence restraining order (DVRO) entered after an evidentiary hearing in September 2016. The DVRO, which was of two years' duration,[1] required Garcia not to contact her ex-girlfriend Lauren Sublett and to move out of Sublett's apartment. Sublett had previously secured a temporary DVRO based on a declaration alleging extensive physical and verbal abuse. At the hearing, she relied mainly on that declaration. Neither party requested a statement of decision or of reasons (Code Civ. Proc., § 632; Fam. Code,[2] § 6340, subd. (b)), and the court modified and signed a Judicial Council form DVRO submitted by Sublett.

Garcia argues that no substantial evidence supports the court's implied finding that she had engaged in abuse as defined by the Domestic Violence Prevention Act (DVPA) (§ 6200 et seq.). While acknowledging that this court cannot reweigh the evidence, Garcia

[1] Because the DVRO expired by its own terms in September 2018, this appeal may well be moot. Because the matter was fully briefed before that date, and the order may since have been renewed (Fam. Code, § 6345, subd. (a)), we shall decide the appeal on the merits.

[2] All subsequent statutory references are to the Family Code unless otherwise noted.

nonetheless devotes most of her brief to challenging the credibility of Sublett's evidence. She also raises two evidentiary arguments and one legal argument about the scope of "abuse" under the DVPA. Those arguments, however, are either forfeited or rendered inconsequential by the substantial evidence of physical abuse, and of verbal conduct that clearly qualifies as abuse under the DVPA. We shall thus affirm the DVRO.

Factual and Procedural Background

Sublett and Garcia began dating in 2014; that summer, Garcia moved into Sublett's apartment. In 2015, the building manager signed a document acquiescing in Garcia's occupancy so long as Sublett remained a tenant. At some point in the first half of 2016, Sublett and Garcia broke up, but Garcia stayed in the apartment. In May 2016, at Garcia's initiative, they retained counsel to pursue remedies for the landlord's alleged failure to repair hazardous conditions.

Sublett alleged in her verified DVRO application, filed in July 2016, that Garcia "drinks excessively and uses methamphetamines." (Garcia subsequently admitted past substance abuse but insisted that she had been clean since October 2015.) Sublett sought an order barring Garcia from contacting her or engaging in various forms of abuse, as well as stay-away and move-out orders. Sublett declared that substance abuse led Garcia to rage at her daily, and often abuse her. She alleged, among other things, that Garcia punched her, threw things at her, pushed her against walls, threw her down, and strangled her,; threatened her by repeatedly stabbing a wall or carpet with a hunting knife while saying, "you need to leave before I hurt you," or sometimes "kill you"; broke lightbulbs and brandished the broken glass at her; and prevented her at times from getting treatment for her Crohn's disease, which she claimed was aggravated by the abuse, causing her to lose 40 pounds over the course of the relationship.

Sublett described three specific incidents in May and early June 2016 involving several forms of abuse. On July 20, Sublett related in her declaration, Garcia overheard her talking to her father (presumably about Garcia), and said, "You should know by now who you are messing with; watch the fuck out." On July 24, Sublett discovered that Garcia had accessed her email account and read messages that Sublett had sent about Garcia's

abuse. The next day, Sublett filed her DVRO application, which concluded by expressing her fear that either Garcia or the stress-driven exacerbation of her illness would kill her. On August 4, Sheriff's deputies served the DVRO papers, and Garcia left the apartment.

After the court continued the DVRO hearing to enable Garcia to prepare a written response to the application, Garcia filed a declaration denying Sublett's allegations of abuse and offering alternative explanations of several incidents, accompanied by several exhibits and declarations from three friends or relatives who had never seen Garcia abuse Sublett.

At the hearing on September 2, 2016, Sublett was represented by attorney Anne Sidwell, while Garcia remained unrepresented. Before the hearing, Sidwell filed an unsigned Judicial Council form declaration in the name of Bruno Baldini, who manages Sublett's building, to which was attached a letter from Baldini stating that Garcia had been "belligerent and abusive" to his staff and contractors. Sidwell also filed a supplemental Sublett declaration attaching two audio files from September and October 2015 that allegedly record Garcia abusing her.

When the court called the case and asked how many witnesses each side planned to present, Sidwell responded, "we would proceed on the pleadings. I could proffer the testimony of my client's father[,] which . . . would only be about five minutes." Sidwell then elicited brief testimony from Sublett's father about occasions when Garcia had been angry or aggressive and, without objection, played the two audio files. With regard to affectionate text messages between the two that Garcia had presented, Sidwell acknowledged that the couple had had "happy moments," but argued that those did not negate Garcia's "abusive and violent behavior . . . on other occasions."

Garcia responded that she had been intoxicated at the time of the recordings but had since been sober for "almost one year." She described caring for Sublett while she was sick. She argued that the real reason Sublett sought a DVRO was that Garcia had contacted the City's Department of Building Inspections and pursued legal remedies for hazardous conditions in the apartment; Baldini thus wanted Garcia removed; and Sublett was "obviously going to jump onboard with them and say anything to smear my name so

she can have me removed out of a home that I created for her." Garcia denied Baldini's allegations of unwarranted belligerence to contractors.

In closing, Sidwell argued that Sublett is "incredibly fearful" of Garcia and asked for a DVRO of five years' duration. The court granted the application in part, for a two-year duration, with the following explanation: "[T]his has clearly been a rollercoaster of a relationship, . . . and that's what happens between people, and I am going to find good cause to issue a personal conduct order. [¶] The move-out order [in the temporary DVRO] will remain [in effect]. We'll provide for a civil standby so that Ms. Garcia can [remove her property from] the apartment . . . ." The court stated that it would not grant a stay-away order, as Garcia was already out of the apartment, but Sublett could file a renewed request if necessary. Garcia timely appealed.

Discussion[3]

Upon proof of "a past act or acts of abuse," the DVPA authorizes a court to issue a DVRO. (§ 6300.) Under the DVPA, to "abuse" means to "intentionally or recklessly cause or attempt to cause bodily injury," to "place a person in reasonable apprehension of imminent serious bodily injury," or to "engage in any behavior that . . . could be enjoined pursuant to Section 6320" (§ 6203, subds. (a)(1), (3) & (4)). Section 6320, in turn, authorizes a court to enjoin many forms of violence or harassment, including "threatening . . . [or] disturbing the peace of the other party." (§ 6320, subd. (a).)

If a court reviewing a DVRO request finds abuse, it "shall consider the totality of the circumstances in determining whether to grant . . . relief." (§ 6301, subd. (c).) We review the issuance of a DVRO for abuse of discretion. (*Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079). We review factual findings supporting discretionary rulings for substantial evidence. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) If, as here, neither party requested a statement of decision or of reasons, we infer all factual findings

[3] Garcia addresses in her briefs, based on an augmented record on appeal, several events that postdate the DVRO. None of these developments is relevant to whether the trial court abused its discretion in entering the DVRO.

necessary to support the order on appeal, and then review whether substantial evidence supports those findings. (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1148 & fn. 11.)

Garcia argues that "the evidence was undisputed" that she never harmed Sublett, and that Sublett's claimed fear of harm was thus irrational. Garcia bases this argument on the fact that Sublett did not testify about the abuse at the hearing, or offer contemporaneous documentation to corroborate her claims. Garcia emphasizes that, at six points during the hearing, Sidwell stated, "my client [would or will] testify that . . . , yet Sublett did not testify. Adding that the judge did not call Sublett to the stand, Garcia argues that she was "never afforded the opportunity to [question] [Sublett] under oath."

However, Sublett's declaration alone contains extensive evidence of physical and verbal abuse. The DVPA authorizes a court to issue a DVRO "if an affidavit *or* testimony and any additional information provided [via criminal history search] shows . . . reasonable proof of a past act or acts of abuse," and specifies that a DVRO may be "based solely on the affidavit *or* testimony of the person requesting [it]." (§ 6300, italics added; see Code Civ. Proc., § 2015.5 [declaration may satisfy requirement of proof by "affidavit"].) Garcia never attempted to call Sublett as a witness. When the court asked at the start of the hearing how many witnesses each side would present, Sidwell stated, "we would proceed on the pleadings," adding only that she "could proffer the testimony of my client's father."[4] Garcia never expressed a desire that Sublett testify or expectation that she would do so. After Garcia finished her closing statement, the court asked, "Anything further?" and Garcia responded only, "Thank you."

Although Garcia is not an attorney, the trial court was not obliged to explain that it could issue a DVRO based on the content of a declaration, or to ask Garcia if she wished to call Sublett as a witness in order to impeach her declaration. (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210 [self-represented party "is to be treated like any other party"].) Garcia's principal argument thus fails, as it rests on

[4] Although during the course of the hearing Sidwell repeatedly stated, "my client will testify . . . ," in context it is apparent that Sidwell was indicating what Sublett was prepared to testify, but no request was made that she do so.

the mistaken premise that Sublett offered no evidence of physical abuse. Moreover, Garcia's argument that some of her alleged comments constitute mere "petulance" or the inevitable frictions of a contentious breakup, and cannot constitute "abuse" under the DVPA is beside the point. While certainly not every harsh word constitutes abuse, the record contains substantial evidence of physical abuse, as well as verbal conduct such as threats of violence that clearly can constitute abuse under the DVPA. (See, e.g., *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 852–853; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497–1499.)

Also irrelevant is Garcia's argument that Sublett's real reason for seeking a DVRO was to appease her landlord by putting an end to Garcia's pursuit of remedies for substandard housing. Garcia advanced this theory below, but the trial court implicitly rejected it. We cannot reweigh the evidence as to Sublett's motives; nor can we find that asserted gaps in the evidence undermine the credibility of her sworn statements that she had been abused by, and was afraid of, Garcia. (*Sabbah v. Sabbah, supra,* 151 Cal.App.4th at pp. 822–823.)

Garcia also argues that the court erred by receiving into evidence both Baldini's letter, which did not satisfy the statutory requirements for a declaration (Code Civ. Proc., § 2015.5), and the recordings of alleged abuse, because Sublett did not provide Garcia the required copies and transcripts of the recordings before offering into evidence (Cal. Rules of Court, rule 2.1040(b)(1)). While those objections may have been sound, they were not asserted at the hearing and thus were forfeited. (*People v. Blacksher* (2011) 52 Cal.4th 769, 819.)[5] In any event, any error in admitting those items of evidence was harmless: Sublett's declaration by itself constitutes substantial admissible evidence to support the implied finding that Garcia committed one or more acts of abuse under the DVPA that may justify a DVRO.

[5] Had Garcia timely objected, either evidentiary deficiency could have been corrected. For example, as to the audio files, had an objection been made under rule 2.1040, the court could have ordered Sublett to provide the requisite copies and transcripts within five days after the hearing. (Cal. Rules of Court, rule 2.1040(b)(2).)

Disposition

The DVRO is affirmed. Sublett shall recover her costs on appeal.

POLLAK, P. J.

WE CONCUR:

STREETER, J.
TUCHER, J.